RATAN SINGH v. TAN TENG LUAN & ANOR.

[A.C.J. (Winslow J.) February 5, 1963]

[Singapore — District Court Appeal No. 18 of 1962]

Moneylending — Discrepancy in versions of sum lent — Onus on debtor to show that sum lent was different from amount on acknowledged promissory note — Joint debtors — Conduct of debtors — Failure of one debtor to appear in response to summons — Called as witness for defence — Debtor appearing only after three successive adjournments — Significance of this in assessing evidence.

The appellant, a moneylender, contended that he had loaned the defendants the sum of $400 as shown on the promissory note whereas the defendants maintained that the actual sum was $198. The second defendant had failed to enter appearance to the summons and his presence in court had only been secured as a witness for the defence. There were certain discrepancies in the evidence of the two defendants.

Held: (1) the inconsistencies in the evidence of the defendants were not in themselves such as to justify interference with the District Judge's decision;

(2) the District Judge had, however, failed to take into consideration that the second defendant had not answered the summons and this failure to do so taken with all the other evidence, called for the appeal to be allowed.

Observations on reviewing findings of fact by District Judge.

DISTRICT COURT APPEAL.

K. K. Bezboruah for the appellant.

Respondents in person.

Winslow J.: This appeal mainly involves a question of fact as to the quantum of the loan actually made on 3rd July, 1958 and about which there is conflict between the parties.

The onus of establishing that a different and a smaller sum of $198 instead of $400 was received by the defendants than shown and acknowledged in the promissory note by them is of course on the defendants. The learned District Judge accepted their evidence on this point and complaint is made that his conclusion was unjustified.

Reference was made to District Court Appeal No. 2 of 1957, where Whyatt C.J. disturbed a finding of fact by the learned District Judge in respect of minor parts of the evidence of the plaintiff whose essential evidence had been accepted. In each of District Court Appeal No. 29 of 1960 and District Court Appeal No. 9 of 1961, the judgment of the learned Civil District Judge was reversed on the ground that the appellate Judge was not prepared to accept his conclusions that it was improbable that a moneylender would lend large sums like $400 or $700 without security to persons earning $135 per month and $156 per month respectively.

Each appeal must be judged on its own facts and no similar improbabilities are alleged in this case, as they were in the cases cited, as founding a rejection of the moneylender's claim. Here the sole question, as I have said, is as to the quantum of the actual loan made. On this the learned District Judge accepted the defendants' version on a balance of probabilities and, if that were all, I cannot say that he would have been wrong in doing so although there are also some apparent discrepancies between what each defendant says about the number of instalment repayments and payments of interest. They are not, however, in my opinion, so glaring as to make the final conclusion ill-based or perverse on this ground alone. Thus the 1st defendant says he paid two sums of $50 through the 2nd defendant whereas the latter only refers to one such payment. The 1st defendant may, however, be telling the truth but the 2nd defendant also differs from the 1st defendant as to who made payments of interest though both say 3 or 4 such payments were made. All parties are of course referring to incidents which took place many years earlier and notwithstanding these differences both defendants say the amount lent was $200.

Were this all, I should be disposed to dismiss this appeal. There is, however, another factor which plaintiff's counsel did not adumbrate. The second defendant never answered the summons at all and stayed away from the proceedings until called as a witness by the 1st defendant. This should, in my opinion, have been considered by and have weighed with the learned District Judge in assessing his evidence. There is nothing on the record to show that any consideration was given to this aspect of the matter. Furthermore, it took 3 adjournments over a period of nearly 3 months before he could be brought to Court as a witness.

Moreover, although the plaintiff did not pursue his remedies against them earlier — and the learned District Judge found his explanation of this delay unconvincing — it seems to me that there was a very good reason, which everyone seems to have overlooked, for this delay. The introduction of the new Ordinance in 1959 made the position of moneylenders collecting old debts uncertain and it is no doubt because of this uncertainty as to whether they had to be licensed as moneylenders or not that some delay took place until the Courts clarified the position. In any case both defendants themselves did nothing about replying in 1960 to the notice of demand through the plaintiff's lawyers claiming $400 with interest. Had they felt strongly on the subject of the falsity of the claim they should have done something about it then.

On the whole, I am of the opinion, with some reluctance at having to do so, that this appeal should be allowed against both the defendants. Whatever chance of success the 1st defendant might have had has been destroyed by the conduct and behaviour of the 2nd defendant which I consider puts both of them out of Court on this appeal. It may well be that the 1st defendant only received $198 and that, as he says, the 2nd defendant was only his surety. On that basis he would be entitled to succeed. But these matters have not been considered, in the light of the 2nd defendant's behaviour, by the learned District Judge, and I cannot say that, in the absence of such consideration, his final conclusion was entirely justified. I would therefore allow the appeal with costs only against the 2nd defendant whose conduct I consider has brought about the 1st defendant's present misfortune on this appeal.

Appeal allowed.